THE FORM OF THE GENERAL ACCEPTANCE.

OF the various subdivisions of the law of commercial paper, the form of the acceptance is one that in a way has had the most diversified history. Furthermore, from its very nature, and from the fact that the law merchant was very seldom touched by statute, and from the fact that the common law attached no particular significance to a writing (except as to writings under seal and as to writings required by the Statute of Frauds), the form of the acceptance was possible of a rather elaborate analysis.

In England the rules governing an acceptance were highly developed. Later statutory enactments reduced the law (and consequently the possible situations,) to a very simple ruling and a simple state of facts. The American jurisdictions in many instances retained the complexity of the case rulings for a long time after the passage of the English statutes. When the greater number of the American commonwealths finally codified the law on commercial paper by adopting the Negotiable Instruments Act, the sections of the act touching on the acceptance were somewhat inferior in simplicity to the English enactments on the subject.

As matters stand at the present time, the law as to the form of the acceptance (in England and largely in the United States) is statutory in its nature. But as the case law on this point preceded for so long a period of time the later statutes and as the statutes in many instances merely affirm the case law, and as the sections covering this point in the Negotiable Instruments Act have not been very much in litigation,[1] it follows that for the intelligible consideration of the statutes on the acceptance, the case law which preceded the statutes must be fairly well understood. Therefore a discussion of the present rules is largely a history of the case law; in this discussion the writer has first taken up the various situations presented by acceptances not in writing, then the situations presented by acceptances in writing, and lastly the changes made by statute.

I. ACCEPTANCES NOT IN WRITING.

Acceptances Not In Writing And Made Prior To The Execution of the Instrument.[2]

The earliest English decision on this point is that of *Johnson* v *Collings*.[3] In that case the drawee owed money to one Ruff, and be-

[1] In Illinois, this section has not been construed since the passage of the Act, in 1907.

[2] No particular form of words was necessary, any expression that could be construed as not dissenting from the order was sufficient to constitute an acceptance, such as a promise to pay or to accept, or stating the bill is good, etc. Spaulding v. Andrews, 48 Pa. St. 411.

[3] 1 East 98.

ing pressed for payment told Ruff that if Ruff would draw on him, he would pay the draft. Ruff accordingly drew, and negotiated the instrument; the indorsee sued the defendant as acceptor. Lord KENYON held for the defendant, stating: "The cases have determined that there may be a parol acceptance; that perhaps was going too far; but at any rate the determinations have gone no further; and I am not disposed to carry them to the length now contended for, and to say that a promise to accept a bill before it is drawn is equally binding as if made afterwards."[4]

In *Johnson* v. *Collings* there was no element of estoppel. However in the case of *Bank of Ireland* v. *Archer*[5] it was shown that the plaintiff had advanced money upon the faith of the drawee's promise to him to accept a bill to be drawn. Baron PARKE nevertheless held the drawee not to be liable as an acceptor. The reasoning adopted in the decision is very broad, and undoubtedly best suited to the commercial convenience of a country; he said: "For reason points out that in order to constitute an acceptance, there ought to be a bill in existence, which could be accepted: and to hold that the same act would be an acceptance or not, according to the subsequent contingency of the holder of the bill having notice of it, would introduce a strange anomaly and confusion into the relation of the parties to the bill, the drawee being an acceptor as to some and not as to other indorsees."

The rule in the American jurisdictions was the same as the one enunciated by these cases. It was however based on a different line of reasoning, as will be pointed out.

Acceptances Not In Writing And Made Subsequent To The Execution Of The Instrument.

The first question to determine is this: What is the status of the oral acceptance made to the holder of the bill?

The cases in England and in most of the United States were in unanimity on this point: that the oral acceptance bound the drawee as an acceptor. Some jurisdictions, however, drew a distinction

[4] The instrument which ordinarily needs acceptance is a time bill, as so many days from date, or from sight. Demand bills are payable on demand, but if the holder receive an acceptance, there is no reason for its not being binding. If however the drawee refuses to pay the demand bill and agrees to accept, it would seem that prior parties are discharged unless proper steps are taken; a very curious situation. It is however a very common procedure on the part of banks to certify a check and to refuse to pay because of a defective indorsement and later to pay when the defect is cured. At the common law a sight bill generally drew three days grace and could be accepted. Days of grace, however, have been abolished by the Negotiable Instruments Act.

[5] 11 M. & W. 383.

based on the drawee's being in funds or not in funds. In the former case the oral acceptance was binding. In the latter situation, the drawee not being in funds,[6] or not being under any contractual duty to honor the instrument, was deemed in the same position as a person who was answering for the debt, default, or miscarriage of a third person—the drawer—hence the undertaking must be in writing to bind the drawee. As stated by the court in *Morse* v. *Bank*[7]: "There is no averment that, at the time of the presentation of the check, the drawer had any funds on deposit in the defendant bank, or that the defendant at that time was under any obligation to honor his check. * * * The promise of the bank to pay the debt owing by the drawer to the plaintiff was a promise to pay the debt of another, and void under the Statute of Frauds."[8]

The second point which logically follows is this: Does the acceptance inure to parties to the instrument prior or subsequent to the one to whom the acceptance is made and who holds the instrument at the time of such acceptance?

Spaulding v. *Andrews*[9] is a case illustrating the common law ruling on this point. In that case one Lambert held a bill drawn on Spaulding, who upon the presentation of the same by Lambert for acceptance said: "You know me, and you may rely upon it, the draft will be paid; it will certainly be paid at maturity." Lambert negotiated the instrument to Andrews, who then knew nothing of the acceptance. The court in holding Spaulding liable as an acceptor said: "That a parol acceptance of a bill is binding upon the acceptor, in all cases not regulated by statute, is beyond doubt; and that a promise to pay a draft when it shall mature is an acceptance, is equally certain. * * * If a bill comes into a man's hands with a parol acceptance, though he does not know of that acceptance, he may avail himself of it afterwards when it comes to his knowledge." Though in this case there was no issue as to persons precedent, the reasoning supports the conclusion that it would be equally an acceptance in their favor. Therefore if an accepted bill be dishonored while in

[6] Some states had a peculiar rule with reference to checks, under which a check operated as a pro tanto assignment of funds. Under such a rule no acceptance was necessary to enable the holder to sue the drawee bank, if the drawer had sufficient funds on deposit to meet the check. Except for the above, a check stands on the same footing as a bill. Under the Negotiable Instruments Act there is no longer any doctrine of pro tanto assignment.

[7] 1 Holmes 209.

[8] If the drawee were only partly in funds, then it seems that the acceptance operated as an acceptance for the amount that was on deposit, and not for the full amount of the bill. Such seems to be the fair inference of Chicago Heights Lumber Co. v. Miller, 219 Ill. 79, which is in accord with Morse v. Bank.

[9] 48 Pa. St. 411.

the hands of the payee, and the payee has recourse against the drawer, the drawer can unquestionably hold the drawee to the acceptance.

The third phase presented is: What is the status of an acceptance made to a drawer or indorser after such party has negotiated the instrument?[10]

The English law remained perfectly consistent on this point, and allowed the holder to charge the drawee as an acceptor, as could also the person to whom the promise to pay or accept was made. No distinction of this nature seemed to be observed in the common law rules of the acceptance. If the acceptance had been in writing it would clearly be an acceptance, and as the English law attached no significance to a written engagement on this point (except as a matter of facilitating proof), there seems to be no reason for insisting on a writing especially as in the written acceptance no doctrine of estoppel is present. Curiously, the American rule on this aspect of the acceptance introduced a new fact viz: the necessity of a writing. There could therefore be no oral acceptance under a state of facts coming within the above classification.[11]

Retention Of The Instrument As An Acceptance.

Undoubtedly at the common law retention of the instrument left for acceptance would under certain conditions amount to an acceptance. But when such instrument is left for acceptance, the drawee has certain rights in respect thereto, as stated by the court in *Westberg* v. *Chicago Lumber & Coal Company*,[12] as follows:

"The drawee is not bound to act at once. He has a right to a reasonable time[13]—usually twenty-four hours—to ascertain the state of accounts between himself and the drawer, and until the expiration of that time the holder has no right to demand an answer,[14] nor to deem, without categorical answer, the bill either accepted or dishonored; not accepted, because of the right of the drawee to consider before he binds himself; not dishonored, because both drawer and drawee have the right that their paper be not discredited during such period of investigation."

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[10] The promise to pay need not necessarily be made to the indorser or drawer. A promise to any person interested in having the bill paid is sufficient. Jones v. Bank, 34 Ill. 313. Usually the person would be the drawer or some other party to the instrument.

[11] Coolidge v. Payson, 2 Wheat. 66; Exchange Bank v. Rice, 98 Mass. 288. Illinois followed the common law on this point, going contrary to the general run of American decisions. Jones v. Bank, 34 Ill. 313.

[12] 117 Wis. 589.

[13] § 136 of the Negotiable Instruments Act states this period to be 24 hours.

[14] He may demand back the bill.

The question however that arises in the case is this: After the expiration of the twenty-four hours is it the duty of the holder to call for the bill, or is it the duty of the drawee to return the bill? If it be the duty of the drawee to return the instrument at the expiration of the reasonable time, the mere non-return would constitute an acceptance; but if the duty devolves upon the holder, then there must be something in addition to the mere failure to return the bill, to render the drawee liable as an acceptor.

BAYLEY, J., in *Jeune* v. *Ward*,[15] states (though by way of dictum) the English rule on this point as follows: "where a bill is, in the usual course of business, left for acceptance, it is the duty of the party who leaves it to call again for it, and to inquire whether it has been accepted or not. It is not, as it seems to me, the duty of the other person to send it to him." In *Dunavan* v *Flynn*[16] the court applied the dictum of *Jeune* v. *Ward*. The bill was left with the drawee for acceptance but was never called for by the holder, who sued the drawee as an acceptor after the expiration of the reasonable time. The court held that under these circumstances the detention of the bill in the defendant's custody did not bind him.

If, however, the course of dealings between the holder and the drawee be such that the burden of returning the instrument devolves upon the drawee, mere retention will then be construed as an acceptance. In *Harvey* v. *Martin*[17] the plaintiff mailed the draft to the drawee, desiring him to accept it and hand it to the plaintiff's agent in London, this being the usual mode of dealing between them. The defendant retained the custody of the bill after the expiration of the reasonable time without saying anything about the instrument. Lord ELLENBOROUGH said: "This is clearly an acceptance."[18]

The question of the constructive acceptance, however, usually arises in this manner: After the expiration of the reasonable time that a drawee has to deliberate whether he will accept or not, the holder calls for the same, whereupon the drawee refuses to return the instrument. Does such tortious refusal constitute an acceptance?

The English rule seems to be governed by the following language

[15] 1 B. & Ald. 653.

[16] 118 Mass. 537.

[17] 1 Camp. 425.

[18] Dean Ames' in his summary seems to think that Harvey v. Martin was overruled by Jeune v. Ward. There seems to be enough difference in fact to question this conclusion. In accord with Harvey v. Martin is Storer v. Logan, 9 Mass. 55; see also the language of Gray, C. J., in Dunavan v. Flynn, 118 Mass. 537. But Harvey v. Martin has undoubtedly been overruled by the Negotiable Instruments Act, under which the only acceptance that need not be in writing is the tortious handling of the bill, which Harvey v. Martin clearly is not.

of BAYLEY, J. in *Jeune* v. *Ward*.[19] "For what is an acceptance? It is an engagement of the one party acceding to the proposition of the other; and it would be very strange indeed if a refusal on his part could in law be deemed an acceding to the proposition."[20] Retention therefore will give the holder an action in tort, but not an action lying within the rules of the law merchant. The general American rule followed the English rule.[21]

Destruction of the Instrument as an Acceptance.

In *Jeune* v. *Ward*[22] the destruction of the instrument took place after the expiration of the reasonable time within which the drawee has to decide whether he would accept or not. It was held that the drawee was not liable as an acceptor. But there seems to be no reason why there should be any distinction between a destruction within or after the reasonable time. BAYLEY, J. touched on the point, stating: "I forbear to say, at present, what would be my judgment on the effect of a destruction of the instrument by the party with whom it was left for acceptance, within the reasonable time during which the other party might expect an acceptance of the bill. If a party says he has destroyed the bill, and that he will not accept it, such destruction might probably subject him to an action of trover for the bill; but I cannot think that it would amount to an acceptance."

Sundry Acts which Constitute Acceptance.

In *Seventh National Bank* v. *Cook*[23] an unusual state of facts was presented. One Cook had a check drawn payable to himself by one Greenwood on The Seventh National Bank. One Barnes, without the authority of Cook, indorsed the instrument and cashed the same. The check was duly paid and charged to the account of Greenwood, and was, together with his other canceled vouchers, returned to him. Cook procured the canceled voucher from Greenwood and sued the bank. The court held the bank liable, saying: "The bank, having

[19] 1 B. & Ald. 653.

[20] Generally speaking, at any time before communication of the acceptance or the delivery thereof, the acceptance could be retracted. In Cox v. Troy, 5 B. & Ald. 474, the drawee, before communicating the fact that he had accepted, erased the acceptance and returned the instrument. The court held that there was no acceptance. Although Cox v. Troy has been greatly shaken in England, it has been generally followed in this country Dunavan v. Flynn, 118 Mass. 537; Freund v. Bank, 3 Hun. 689. Section 1, Art. 1 of the Negotiable Instruments Act reads: "Acceptance means an acceptance completed by delivery or notification."

[21] Dunavan v. Flynn, 118 Mass. 537. Some states, including New York, adopted a contrary rule by statute. The Negotiable Instruments Act follows these statutes.

[22] 1 B. & Ald. 653.

[23] 73 Pa. St. 483.

assented to the order, and communicated its assent to the drawer, would be considered as holding the money thus appropriated, for Cook's use, and therefore under an implied promise to pay him on demand. * * * It is in fact an acceptance, and binds the bank as a certified check does."[24]

II. ACCEPTANCES IN WRITING.

Acceptances In Writing Made Prior To The Execution Of The Instrument.

The common law rule on this point was laid down by Baron PARKE in the case of *Bank* v. *Daly*[25] as follows: before any writing could amount to an acceptance, there must first be a bill in existence capable of being accepted. And this rule seemed to admit of no exceptions.

In the United States, however, there was a wide departure from the clear-cut English rule, the American rule having as its chief authority the case of *Coolidge* v. *Payson*,[26] the opinion being written by MARSHALL, C. J. The facts were as follows: Cornthwaite & Cary claimed certain monies in the hands of Coolidge & Company, being the proceeds of a prize captured in the war of 1812, and which had been adjudicated upon in the United States District Court. Coolidge & Company wrote to Cornthwaite & Cary to the effect that if a Mr. Williams gave his approval as to the correctness of a certain legal document pertaining to the prize they (Coolidge & Company) would honor Cornthwaite & Cary's draft on them. Cornthwaite & Cary showed this letter to Payson & Company to whom they were indebted and who inquired of Mr. Williams if the legal form were satisfactory. Being answered in the affirmative, Cornthwaite & Cary drew the draft, payable to Payson & Company, who received the same and applied it on the debt owing to them by the drawers.

The court held the drawees liable as acceptors, laying down the rule that practically made the American law on the point, as follows: "That a letter written, within a reasonable time before, or after, the date of a bill of exchange, describing it in terms not to be mistaken, and promising to accept it, is, if shown to the person who afterwards takes the bill on the credit of the letter, a virtual acceptance binding the person who makes the promise."[27]

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[24] Strictly speaking this is a case of actual acceptance, and undoubtedly is overruled by the Negotiable Instruments Act.

[25] 11 Meeson & W. 383.

[26] 2 Wheat. 66.

[27] Marshall, C. J., was under the erroneous impression that the English law on the point was governed by Pillans v. Van Mierop, 3 Burr 1663. But at the time Coolidge v.

An analysis of the language of MARSHALL, C. J., shows four points to be observed.

First:—The person to whom the letter should be written promising to pay or accept the bill to be drawn. In the principal case the letter was written to the drawer, but there is no reason why it should be confined to him, but may be written to the future payee, or to any person who is interested in seeing the bill negotiated or paid. If written to a stranger, it is difficult to see how an estoppel can arise.

Second:—The time within which the letter must be written. The decision uses the word reasonable, which of course varies with the circumstances of each case. In *Coolidge* v. *Payson* it was two days.

Third:—The description of the instrument to be drawn. In describing the instrument in terms not to be mistaken, the mention of the date or the amount might be sufficient, the amount probably would be. However, some jurisdictions deem the letter insufficient, if the authority to draw, given to the drawer, be a general authority, That is, not giving any description of a particular bill.

Fourth:—Taking the bill on the credit of the promise contained in the letter.

In this case, receiving the bill and applying it on an antecedent debt,[28] was deemed an advance, on the faith of the promise. It is in a way the weakest of the illustrations of the reliance upon the faith of the promise, inasmuch as the antecedent debt arose in no way connected with the acceptance.[29]

Acceptances In Writing And Made Subsequent To The Execution Of The Instrument.

(A) *Not on the Instrument.*

The acceptances which are in writing and not on the instrument may be classified as follows.

Payson was decided the English law was clear on this point, viz., that there could be no acceptance under any circumstances until the bill was in existence. Johnson v. Collings, ruling this point, was decided in 1800, 17 years before the American case. The reasoning was broad enough to cover the facts of Coolidge v. Payson, although no element of estoppel was present in Johnson v. Collings.

[28] That receiving a bill in payment of an antecedent debt will constitute value was a general rule settled in the law merchant. It is obviously a different question from that of a positive reliance. At the best, taking a bill in payment of an antecedent debt, to satisfy the requirements of Coolidge v. Payson, is a negative reliance, unless one states that by taking the bill, the holder is debarred from acting on the old debt until the bill is dishonored. In a jurisdiction which holds that an antecedent debt is not value, it would of course not constitute an advance within the ruling of the principal case.

[29] Logically the ruling of Coolidge v. Payson would allow an acceptance to be such as to some parties and not to others, although all are parties on the same instrument. Thus if to X, the payee, there is an acceptance, yet if Y, an indorsee, took the instrument without any knowledge of the writing, to him it would not be, a very strange condition.

(1) *Made to the Holder.*

The English and American rule on this point is the same as that of the oral acceptance made to the holder, viz: the writing binds the drawee not only in favor of the person to whom it is made, but it inures also to all prior and subsequent parties to the instrument.

(2) *Made to the drawer or other party to the bill, after such party had negotiated the instrument.*

The English rule on this point is perfectly consistent, viz: it eliminates any question of reliance and allows such an acceptance to operate for the benefit of all parties to the bill. In *Powell* v. *Monnier*[30] one Newbury drew a bill on Monnier for £50 payable to Powell. Newbury negotiated the bill on April 15th. A few days later Newbury received a letter from Monnier, stating that the bill would be duly honored. Lord HARDWICKE held Monnier liable as an acceptor, stating: "What determines me are Monnier's letters, by which it appears very clearly that he has accepted [the draft]. * * * I think there can be no doubt, but an acceptance may be by letter, and has been so determined."

To the same effect is the language of Lord ELLENBOROUGH in the case of *Wynne* v. *Raikes*,[31] the facts of which are similar to *Powell* v. *Monnier*. "A promise to accept an existing bill is an acceptance. A promise to pay it is also an acceptance. * * * [Although] the bill was not taken by the holder upon the credit of this promise of the defendants so made to the drawers, nor was the same known to them to have been made at all, till after the bill was due, they, the holders can avail themselves of it as an acceptance."

In the case of *Coolidge* v. *Payson*, supra,[32] the court laid down obiter to the effect that a promise to pay after the instrument was drawn was on the same footing as a promise to accept an instrument before it was drawn. In *Exchange Bank* v. *Rice*[33] this dictum was applied. In that case Hill drew a bill on Rice, payable to Pitman & Company, who negotiated the same to the plaintiff bank. The bank later presented the instrument for acceptance which was refused. On the day of the refusal to accept, Rice wrote Hill that he had refused to accept as he had no bill of lading, but "That when the bill of lading is received will accept the draft." The letter[34] was shown to the bank, which procured the bill of lading, attached it to the draft and presented it to Rice, who again refused to honor the instrument.

[30] 1 Atk. 611.
[31] 5 East 514.
[32] 2 Wheat. 66.
[33] 98 Mass. 288.
[34] A telegram has the same status as a letter. Eakin v. Citizens' Bank, 67 Kans. 338.

The court said: "The letter of March 15th having been written after the plaintiffs took the bill, therefore not on the faith of it and not addressed to them, did not make the defendant liable to them as acceptor of the bill."[35]

(B) *On The Instrument.*

(1) *Not signed by the drawee.*

In the 17th century the English law on this aspect of the acceptance was a somewhat arbitrary one. The courts seem to have held that any writing on the instrument, which did not negative the drawer's request was arbitrarily held to charge the drawee as an acceptor. In the case of *Anonymous*[36] it was held that "if the party underwrites the bill presented such a day, or only the day of the month, 'tis such an acknowledgement of the bill as amounts to an acceptance."

The rigour of the rule was abated however by the case of *Defaur* v. *Oxenden;*[37] there the drawee had written on the instrument: "Accepted payable at Stevens & Company." The court in instructing the jury said: "That he was of the opinion that the writing might be valid as an acceptance, notwithstanding the want of a signature, but it was a question for the jury whether it was intended to operate as an acceptance."

In America the question does not seem to have been litigated, possibly because of the unusualness of such an acceptance.

(2) *The drawee's signature only.*

In the case of *Spear* v. *Pratt*[38] the court stated the common law rule on this point as follows: "The signature at the common law served in the double capacity of signature and acceptance."

(3) *Signature in conjunction with other words.*[39]

This is of course the clearest illustration of an acceptance to which no exception can be taken. The words in addition to the signature are usually, "Good," "Accepted," "Certified."

III. STATUTORY CHANGES IN THE RULES OF THE LAW MERCHANT.

In England.

At a very early date in the history of the law of the acceptance, it was felt that the prevailing common law rules were somewhat unsatisfactory. The first statute which sought to alter the

[35] Lugrue v. Woodruff, 29 Ga. 648 is in accord.

[36] Comberbach 401.

[37] 1 Moody & Rob. 90.

[38] 2 Hill 582.

[39] The only person who can become liable as an acceptor is the drawee. If a stranger accept (unless he be one for honor) such stranger is liable as a maker of a note but not as an acceptor. For the status of an acceptor for honor, see Norton, Bills and Notes, 101.

law was the STATUTE OF ANNE.[40] The statute in substance provided that if the drawee of an inland bill of exchange "refuse to accept the same by underwriting the same," the holder must consider the bill dishonored.

If the statute had stopped at this point, it would have accomplished something; that is, there could be no acceptance of inland bills except it be on the instrument, as the signature, or other words. The statute however went on and provided that no acceptance should be sufficient to charge the drawee unless written on the bill, and if such acceptance were not written on the bill, no drawer of any such inland bill should be liable, etc.

Lumley v. *Palmer*[41] construed the latter section of the statute. In that case the holder acquiesced in an oral acceptance, and the court held the drawee liable as an acceptor, saying in substance, "That the holder of the bill by receiving such an acceptance, discharged all prior parties, the drawee, however, being liable as an acceptor."

The net result of the STATUTE OF ANNE was to leave untouched any rules that had previously obtained at the common law in regard to the form of the acceptance. The only effect of the enactment was to alter the law in reference to parties secondarily liable on inland bills.

In 1821 Parliament enacted the second statute pertaining to the acceptance,[42] which in substance provided that no acceptance of an inland bill of exchange shall be sufficient "unless such acceptance be in writing on such bill."

The above statute, by omitting any reference to parties secondarily liable, overruled the case of *Lumley* v. *Palmer,* thus accomplishing what was desired by the STATUTE OF ANNE, enacted almost a century before. It must be noted, however, that the statute applied only to inland bills. As to foreign bills, the common law was unchanged.

The third English Statute[43] was passed in 1856, and reads as follows: "No acceptance of any bill of exchange, whether inland or foreign, * * * shall be sufficient * * * unless the same be in writing on such bill * * * and signed by the acceptor," thus narrowing the acceptance on both foreign and inland bills, to words of acceptance on the bill in conjunction with the signature. The doubtful case was where the acceptance took the form of the signature only on the instrument. In *Hindhaugh* v. *Blakey*[44] this question was presented. Lord

[40] 3 & 4 Anne c. 9.
[41] 2 Str. 1000. Ereskine v. Murray, 2 Str. 817 is in accord.
[42] 1 & 2 Geo. IV. c. 78, § 2.
[43] 19 & 20 Vict. c. 97, § 6.
[44] 3 C. P. D. 136.

DENMAN said: "It was contended that inasmuch as * * * a mere signature would have been a sufficient acceptance within 1 & 2 Geo. IV. c. 78, §2, it was not the less so now; and that, inasmuch as it was a signature of the acceptor, the bill was both accepted in writing and signed by the acceptor * * * But, looking at the history of the law, and of the enactments on the subject, * * * and comparing the words of the later statute [19 & 20 Vict. c. 97, §6] with those of the former [1 & 2 Geo. IV. c. 78, §2] we think it impossible that a mere signature of a name can be held to fulfill the double requirement that the acceptance shall be in writing on the bill, *and* signed by the acceptor."

The above decision caused dissatisfaction as being an incorrect construction of the Statute of 19 & 20 Victoria. To correct the ruling, the statute of 41 Vict. c. 13 was passed in 1878, which provided that: "An acceptance of a bill of exchange is not and shall not be deemed to be insufficient * * * by reason only that such acceptance consists merely of the signature of the drawee written on such bill."

The English Bills of Exchange Act (45 & 46 Vict. c. 61) enacted in 1882, was a general statutory assembling of the rules concerning negotiable paper. The part pertaining to the acceptance is the law as finally developed by the statute of 41 Victoria. In England therefore, the only form the acceptance can take is on the instrument as (1) The signature; or (2) the signature in conjunction with other words.

In the United States.

Prior to the adoption of the uniform Negotiable Instruments Act, various states had statutory enactments which touched on the acceptance. There was no attempt, however, to produce harmony among the several jurisdictions. In August 1895, a draft entitled "The Negotiable Instruments Law" was discussed by a conference of State Commissioners on Legislative Uniformity and was recommended for passage to the legislatures of the various states.[45] The law has been adopted in most cases without any modifications. The sections of the law that pertain to the acceptance are 132 to 135 and section 137. Sections 132 and 133 read as follows:

§132. "The acceptance must be in writing and signed by the drawee."[46] §133. "The holder may require that the acceptance be

[45] A full account of the proceedings of the commissioners is found in the preface of Brannan's Annotated Negotiable Instruments Law.

[46] Under certain circumstances equity will grant specific performance of an oral promise to accept. Mere reliance on the oral promise and an advancing of value on the

written on the bill, and if such request is refused, may treat the bill as dishonored."

The above sections abolish all forms of oral acceptances, also the acceptance written on the instrument, and intended to operate as an acceptance, but not signed.

The status of the written acceptance made to the holder, *but not on the instrument,* is, under the statute, one of doubt. Section 132 is not mandatory on this point. Section 133 gives the holder the right to require an acceptance on the instrument, but does not state the effect of the acceptance if the right is not insisted upon. The peculiar phraseology of section 133, stating that the holder may but need not insist on an acceptance on the instrument, seems to leave the common law rule unchanged, and that such is a good acceptance.[47]

Furthermore the two sections do not seem to settle definitely the situation where the signature alone is on the bill. Unquestionably, however, the statute would receive the construction given by the English court and many American courts, viz: the signature operates as both signature and acceptance.

Section 134 refers to the status of a written acceptance, made to a party to the instrument after it is in existence, and not to the holder. The section is evidently designed to adopt the rule of *Bank* v. *Rice*[48] and the dictum of *Coolidge* v. *Payson*.[49] It reads as follows: §134 "Where an acceptance is written on a paper other than the bill, it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value."

Section 135 is a codification of the rule of *Coolidge* v. *Payson*[49] It reads as follows: "An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value."

The preceding sections are in a way merely declaratory of the case law as it existed in the United States prior to the enactment

strength thereof is not sufficient. In Saulsbury v. Blandys, 60 Ga. 646, X agreed with A to sell Y a steam engine, A orally agreeing to accept Y's draft on A. X delivered the engine to Y, but A refused to accept. The court allowed a bill for specific performance.

[47] The Act pertains to negotiable instruments only. At the common law, an instrument complete in all respects as to formal requisites except as to words of negotiability was clothed, as between the original parties, with all the attributes of commercial paper. If, therefore, the instrument have not words of negotiability, its acceptance is not governed by the Act, but by the common law. Westberg v. Chicago Lumber & Coal Co., 117 Wis. 589.

[48] 98 Mass. 288.

[49] 2 Wheat. 66.

of the Negotiable Instruments Act. Section 137 is, however, a radical change from the rule of the common law, and not much of an improvement on the old rule. The section reads as follows: §137 "Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, to return the bill accepted or non-accepted to the holder he will be deemed to have accepted the same."[50]

The question that arises under the statute is this. After the expiration of the twenty-four hours, does any duty devolve upon the drawee of returning the instrument, or must the holder call for the instrument to ascertain whether it be dishonored or not? The construction generally given to this section is that the drawee must do something tortious with reference to the instrument, before any act of his can be deemed an acceptance under the statute. It is clear therefore that mere detention will never amount to an acceptance.[51] Destruction is clearly such tortious conduct as is contemplated by the statute, although the statute is not clear as to the status of a destruction made after the expiration of the twenty-four hour period. There does not seem to be any reason for drawing any distinction between destruction within and after the twenty-four hour period.

If the drawee refuses to surrender the instrument when the holder demands the return thereof after the expiration of the twenty-four period, this is clearly such tortious conduct as amounts to acceptance.[52] And there seems to be no reason to limit the conduct to any certain period of time, as, for instance, if the holder does not call until one week after the twenty-four hour period, the drawee would still be liable as an acceptor if he refuses to deliver up the instrument.

The section also seems to hold that if the drawee refuses to return the instrument (if asked to do so) before the twenty-four hour period has expired, he is also liable as an acceptor. The instrument cannot be considered as dishonored if the drawee surrender the

[50] It seems rather anomalous to provide that acts, which clearly indicate a refusal to accept, shall as a matter of law result in a distinctly contrary undertaking. Illinois omitted this section when it adopted the commissioners' draft.

[51] In Pennsylvania the section received a different construction; i. e., the drawee was deemed to have accepted unless he took the initiative and notified the holder that he did not accept, or returned the bill. This construction was changed by the statute to agree with the New York and Wisconsin decisions.

[52] Westberg v. Chicago Lumber & Coal Co., 117 Wis. 589; Matterson v. Moulton, 79 N. Y. 627. In Dickinson v. Marsh, 57 Mo. App. 566, the court quoted from Matterson v. Moulton as follows: "The refusal mentioned in the statutes, as it seems to us, refers to something of a tortious character implying an unauthorized conversion of the bill by the drawee."

instrument when so requested, as he has of course twenty-four hours in which to come to a decision. In this latter situation the holder would be obliged to present the instrument at the expiration of the twenty-four hours, to ascertain the decision of the drawee.

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